IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-648

FEDERAL ENERGY REGULATORY COMMISSION,
Petitioner,

v.

PENNZOIL PRODUCING COMPANY, ET AL.,
Respondents.

BRIEF OF RESPONDENT SHELL OIL COMPANY

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COUNTERSTATEMENT OF THE CASE

For over ten years the Commission has failed, or refused, to cope with a growing problem in the natural gas producing industry. This case represents a typical example of that problem. The Commission is asking this Court to determine that it has no jurisdiction to deal with the problem, regardless of the merits of the producers' position.[1]

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1. The Commission appears to concede that if the Court of Appeals is sustained, and it is required to give the producers a fair hearing on the merits, that individual relief "must be granted" in many cases, if not in this case, see Brief, p. 24, 25.

The problem arose in this way. Before gas exploration or development can begin, a company or an individual in that business normally obtains an oil and gas lease from the landowner. Such leases provide, in addition to a cash bonus to the lessor, that the lessor shall receive a percentage of either the proceeds received from the sale of gas by the lessee, or a percentage of the market value of the gas produced and sold from the lease. Absent regulation there was no material difference in the two provisions, as the lessee normally sold the entire gas stream at the market value.[2]

The belief that lessor was entitled to his royalty factor based on the price the lessee received for the gas[3] continued until the Commission's decision in the *Permian Basin Area Rate Proceeding,* 34 F.P.C. 159[4], decided August 5, 1965. In that proceeding the Commission rejected the producers' position that the ceiling rate should reflect, as nearly as could be estimated, the price which would be received in a free competitive market

2. The "market value" or "market price" was determined by reference to other sales of gas comparable in time, quality, and availability, *Phillips Petroleum Co. v. Bynum,* 155 F.2d 196 (5th Cir. 1946); *Texas Oil & Gas Corporation v. Vela,* 429 S.W.2d 866, 872 (Tex. S. Ct. 1968); *Arkansas Natural Gas Co. v. Sartor,* 78 F.2d 924 (5th Cir. 1935); *Shamrock Oil & Gas Corp. v. Coffee,* 140 F.2d 409 (5th Cir. 1944); *Sartor v. United Gas Public Service Co.,* 186 La. 555, 173 So. 103 (1937).

3. Which under State law the lessee was not only authorized, but obligated, to market the lessor's share of the gas, see *California v. Southland Royalty Co.,* ____U.S.____, 98 S.Ct. 1955, 56 L.Ed. 2d 505, slip op. p. 9 (1978); 5 H. Williams & C. Meyers, *Oil and Gas Law,* § 853 (1977); 2 Summers *Oil and Gas Law* § 415; *Brewster v. Lanyon Zinc Co.,* 140 F. 801 (8th Cir. 1905); Walker, *Property Interest Created By An Oil and Gas Lease,* 11 Tex. Law Rev. 399, 401.

4. Affirmed, *Permian Basin Area Rate Cases,* 390 U.S. (747 (1968).

(or the "market value") and instead based the ceiling rate on an industry-wide composite cost study for the producing area involved.

The interrelationship between the Commission-imposed ceiling rate and the market value royalty clause was first considered by a court in the companion cases of *Weymouth v. Colorado Interstate Gas Company,* 367 F.2d 84 (5th Cir. 1966) and *J.M. Huber Corporation v. Denman,* 367 F.2d 104 (5th Cir. 1966). In lengthy and lucid opinions by Chief Judge Brown, acting after *amicus* briefs had been filed by the Commission on request of the Court of Appeals, the Fifth Circuit held that as a matter of contract law the lessors were not confined to the ceiling rate established by the Commission for the lessee-producer, but that the lessors' royalty interest might also be subject to that ceiling rate. The cases were remanded to await the initial determination by the Commission whether it had jurisdiction over such interest, and if so, what type of filings were required by the lessors.

The Commission promptly instituted a proceeding to resolve this question, and on July 23, 1969 issued its Opinion No. 562 (42 F.P.C. 164), finding that it had jurisdiction over the price attributable to the royalty owner's share of the gas, and that he could not receive a price in excess of the just and reasonable rate regardless of his contract. The Commission also held that the royalty owner could receive a rate higher than the "filed rate" of the producer-lessee, if no ceiling rate was exceeded. The case was appealed to the District of Columbia Circuit, which reversed the Commission, holding that the royalty owner was not subject to Commission jurisdiction

because he had never made a "sale" of gas in interstate commerce, *Mobil Oil Corp. v. F.P.C.*, 463 F.2d 256 (D.C. Cir. 1972).

Shell Oil Company participated in the case before the Commission, arguing that even if the Commission could not assert jurisdiction over the royalty owner because no sale had occurred, the Commission could still fix the rate to which the royalty percentage would be applied for the reason that otherwise an unreasonable burden on interstate commerce would result, citing *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968) and *Northern Natural Gas Co. v. State Corporation Commission of Kansas*, 372 U.S. 84 (1962). The Commission relied on this argument as an "additional basis" for asserting jurisdiction.[5] The D.C. Circuit rejected this argument on the ground that:

> "The record simply does not focus on what may be involved in the possibility of recovery of royalty calculated on the basis of 'market prices' higher than ceilings." (463 F.2d 256, 264).

This Court denied certiorari, 406 U.S. 976 (1972).

While the *Mobil* case was pending in the D.C. Circuit on appeal, Mobil Oil Corporation sought relief on the market value royalty problem in two area rate cases then pending before the Commission, the *Southern Louisiana Area Rate Proceeding*, 46 F.P.C. 86 and the *Texas Gulf Coast Area Rate Proceeding*, 45 F.P.C. 674. In these cases, the Commission based its decision on a cost calculation which assumed that the producer would pay royalty on the basis of 14 (*Texas Gulf Coast Area*

5. 42 F.P.C. at 172, 173.

Rate Proceeding, 45 F.P.C. 674, 842) to 15 (*Southern Louisiana Area Rate Proceeding*, 46 F.P.C. 86, 132) percent of price he received. Mobil appealed each of those cases on the grounds that the area ceiling rate failed to reflect any cost increment to compensate the producers for the market value royalty problem.

In each case the Court of Appeals rejected Mobil's argument on the grounds that the record did not contain sufficient evidence to enable the Commission to calculate a cost increment to compensate the producers for the market value, and the problem might not be sufficiently severe to merit treatment on an industry-wide basis, *Public Service Commission of New York v. F.P.C.*, 487 F.2d 1043, 1061 (D.C. Cir. 1973);[6] *Placid Oil Company v. F.P.C.*, 483 F.2d 880, 910-911 (5th Cir. 1973).

The issue was again raised by Mobil Oil Corporation in Petitions for Certiorari to this Court. This Court granted Mobil's Petition (and others) from the *Placid* decision, but affirmed the Commission and the Court of Appeals on this specific issue, *Mobil Oil Corp. v. F.P.C.*, 417 U.S. 283 (1974) stating:

> "We agree with the Court of Appeals that Mobil's argument is hypothetical at this stage and that *in any event an affected producer is entitled to seek individualized relief*." (417 U.S. 283, 328) (Emphasis supplied)

In shifting from area rate regulation to nationwide ceiling rates, the Commission continued to base its ceiling rate on a cost study which calculated the producers'

6. Vacated and remanded on other grounds, *Shell Oil Co. v. Public Service Commission of New York*, 417 U.S. 964 (1974).

royalty cost as a percentage of the rate permitted to be charged, although the percentage was increased from 15 to 16 percent to reflect generally higher royalty percentages from offshore leases (*National Rate Case for New Gas,* Opinion No. 699, 51 F.P.C. 2212, 2272). Mobil and other producers, including Shell, continued to argue for a cost increment in the nationwide rate to reflect the market value royalty problem. In each case these arguments were rejected by the Commission; Opinion No. 699, Docket No. R-389-B, 51 F.P.C. 2212, 2272; 52 F.P.C. 1604; affirmed *Shell Oil Co. v. F.P.C.*, 520 F.2d 1061, 1068 (5th Cir. 1975), *cert. denied, sub nom. California Co. v. F.P.C.*, 426 U.S. 941 (1976); Opinion No. 749-C, ____F.P.C.____ (slip opinion p. 27) issued July 19, 1976; affirmed *Tenneco Oil Co. v. F.E.R.C.*, 571 F.2d 834, 848 (5th Cir. 1978).

It was in the context of this legal background that Shell and Pennzoil filed their Petitions for "individualized relief" described in Petitioners' Statement.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the National Gas Act, as interpreted by this Court in *Federal Power Commission v. Texaco Inc.*, 417 U.S. 380 (1974), precludes the Commission from considering the fact that a producer may incur royalty costs substantially in excess of the percentage utilized by the Commission in establishing the ceilings applicable to the gas being sold from the leases in question, in a proceeding for individualized relief, for the reason that such royalty costs may be based in part on unregulated intrastate gas prices, along with other factors.

2. Whether the Commission is required by the Due Process Clause of the United States Constitution to address the question whether the producers' lease is being confiscated by refusal of the Commission to allow the producer a rate which is high enough to recover his costs, in *some* proceeding in which producers' rates are being determined, on either a national, area, individual company, or individual lease basis.

3. Whether, in a case before the Commission to grant abandonment of the royalty owners' percentage interest in the gas being sold in interstate commerce on the grounds that such abandonment is in the public convenience and necessity, the Commission can refuse to consider any issue other than the legal question whether, if the royalty owner is successful in canceling the lessee-producer's lease, that the lessor-royalty owner will be required to continue the sale in interstate commerce.

SUMMARY OF ARGUMENT

This proceeding represents the last chance for producers to obtain relief from confiscation of their leases through a chain of court decisions, detailed in the Statement, *supra,* which twisted the lease contract into a document never conceived of by the parties at the time the contracts were made. Step by step, the Commission has (i) fixed the lessee-producer's gas price at below market value; (ii) been found lacking in jurisdiction to fix the lessor's price at the same level; (iii) refused to consider or take into account this situation in calculating the royalty component of an area cost study used to calculate producer rates on an area basis; (iv) refused again to take this factor into account in making the same calcu-

lation on a national basis; (v) refused to calculate rates on the basis of individual producer company costs[7]; (vi) and finally, in this proceeding, asks this court to affirm that it has no jurisdiction to consider this issue in a specific proceeding brought for this purpose.[8]

This refusal to consider the question of increased royalty costs[9] occasioned by fixing ceiling rates below market value is made in the face of a clear direction by this Court in *Mobil Oil Corp. v. F.P.C.*, 417 U.S. 283, 328 (1974), that this is precisely the type proceeding in which this issue *should* be addressed.

The Commission's position rests primarily, if not totally, on an erroneous reading of this Court's opinion in *Federal Power Commission v. Texaco Inc., supra,* decided in the same term as *Mobil, supra.* The Commission reads *Texaco* as precluding the use of the market prices to determine the royalty component of producer costs, even though by contract the amount of royalty to be paid *must* be determined with reference to such prices. *Texaco* not only does not require such a result, it flatly holds that "market prices may be taken into account along with other factors" in determining producer rates, 417 U.S. 380, 399.

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7. *Permian Basin Area Rate Cases,* 390 U.S. 747 (1968); Petitioner's Brief, page 18.

8. The Commission has also refused to consider this issue on a Petition for a Declaratory Order under Section 1.7(c) of the Commission's Rules (18 C.F.R. § 1.7(c)), see *Exxon Corporation,* Docket No. RI76-29, ____F.P.C.____, issued May 18, 1976, a copy of which is attached hereto as Appendix A.

9. As the Fifth Circuit held in *Placid, supra,* there is no question that "royalty obligations of the producers are cost components of the rate structure", 483 F.2d 880, 911. We do not understand the Commission to contend otherwise.

In remanding the case to the Commission for rehearing on the merits, the Court of Appeals did not require the Commission to find for the producer. The Commission was merely required to consider the merits of the producers' position, after giving them an opportunity, on a reopened record, to attempt to prove their case. The Commission is apparently unwilling to accept that result because it indeed believes that so many producers are incurring such additional costs as to affect the national average royalty figure, or that it cannot refuse to provide individualized relief to many producers if it ever fairly considers the issue (Brief, pp. 23-25). The Commission did not consider the evidence of economic hardship (*i.e.*, costs versus revenues) in the record in arriving at its decision, as it concedes (Brief, p. 9). Therefore, the supporting arguments of counsel, to the effect that Shell could still make a profit and pay the higher royalty cost (p. 34), or the possibility that Shell and Pennzoil may yet prevail in the State Court action against the lessor (pp. 35, 36) need not be considered by this Court, as they were not considered by the Commission below.

On the alternative relief proposal for the granting of abandonment authority on the percentage of the gas attributable to the lessor's interest, the Commission takes the positic. that reversal by this Court of the Fifth Circuit decision in *Southland Royalty Co. v. F.P.C.*, 543 F.2d 1134 (1976), in *California v. Southland Royalty Co.*, ____U.S.____, 98 S.Ct. 1955, 56 L.Ed.2d 505 requires reversal on this issue. While we concede that the grounds on which the Court of Appeals reversed the Commission are no longer present, this does not mean the Commission can look only at one narrow facet

of the public convenience and necessity, ignoring all other considerations affecting both producer and consumer. The case should be remanded on this issue as well, for a full consideration of *all* factors affecting the public convenience and necessity.

ARGUMENT

I. The "Basic Principles Of Rate Regulation" Require, Rather Than Preclude, The Commission To Hear The Petitions Of Shell And Pennzoil For Special Relief On The Merits.

A. The Basis Of The Commission's Decision.

On the question whether the producers are entitled to a hearing on their Petitions for Special Relief, the Commission's decision rests on very narrow grounds. Those grounds, set forth in Opinion No. 753, at pages 453 and 454 of the record (A. pp. 260, 261) and reiterated in Opinion No. 753-A (A. pp. 291-293) are summarized in the following sentence:

> "The Commission does not have the power to base a part of the regulated price [i.e., the royalty cost component used to determine the regulated price] on the unregulated market value of intrastate gas." (A. p. 293)

This is true, says the Commission[10], even where, as as in this case, the royalty cost component is *not based solely* on the "unregulated market value of intrastate gas" but is based on a number of other factors, including

10. Brief, pp. 4, 28.

the Commission's ceiling rates[11], a desire to settle State Court litigation which could result in even higher royalty costs[12], and a desire to clear the cloud on title caused by the *Williams*' lawsuit, so that the lease could be further developed to obtain additional gas for United's customers.[13]

Conceding that royalty costs are only one component of the producers' ceiling rate, the Commission says that *this component* cannot be used because it is based on price which the Commission does not regulate.

The fallacy in this reasoning was exposed by the Court of Appeals below.[14]

> "Determination of the reasonableness of a cost necessarily requires consideration of a market price. In all probability, the reasonableness of a great many costs of gas production must be determined by the prevailing market price in an uncontrolled market. The Commission has failed to suggest why royalty costs in an uncontrolled market are any different than any other cost." (Op., p. 7a; Br., p. 29)

The Commission attempts to justify its position on the basis that the royalty costs are different from other unregulated costs because they are based on unregulated gas prices (Br., p. 29). The short answer to the Commission's position is that Congress did not authorize

11. Appendix, pp. 44, 64, 65.

12. Brief, p. 4; Appendix, p. 56, 72-74, 119-121, 160-161.

13. Appendix, p. 47, 48, 67.

14. The Court of Appeals' Opinion appears as Appendix A to the Petition for Certiorari. Pages of the Court of Appeals' Opinion are cited by the pagination in that Appendix, *i.e.*, Op. p. 1a, etc.

it to regulate intrastate gas prices any more than it authorized it to regulate the cost of steel drill pipe. The Commission always has the power, specifically recognized the Court of Appeals in the sentence preceding the quoted language above (Op., p. 7a) to consider the reasonableness of the cost occurred. The problem here is that the Commission *refuses to hold a hearing where the reasonableness of such costs can be considered,* because it is afraid it may indeed be forced to find these costs to be reasonable (Br., p. 25).

This is not the first case in which the Commission has considered unregulated intrastate prices in determining the reasonableness of producer rates. In *Shell Oil Co. v. F.P.C.* (*Other Southwest Area Rate Case*), 484 F.2d 469 (5th Cir. 1973), *cert. den. sub nom. Mobil Oil Corporation v. F.P.C.*, 417 U.S. 973, the Court of Appeals upheld the Commission's consideration of intrastate prices as "one of the relevant factors" in determining interstate rates, 484 F.2d 469, 479.

In the first national rate proceeding, the Commission again considered a comparison of its rate structure with intrastate prices and was sustained in so doing by the Courts, *Shell Oil Co. v. F.P.C.*, 520 F.2d 1061, 1083-84 (5th Cir. 1975), *cert. den. sub. nom. California v. F.P.C.*, 426 U.S. 941 (1976). The Court of Appeals (Fifth Circuit) held that although the Commission could *utilize* a comparison with intrastate prices, it could not place "*exclusive reliance*" on such prices in determining the ceiling rate, citing this Court's decision in *Texaco, supra.*

In fact, the Commission has promulgated a special form, Form No. 45, to collect intrastate pricing data for

use in determining producer rates, and successfully defended this procedure in the Court of Appeals, see *Continental Oil Co. v. F.P.C.*, 519 F.2d 31 (5th Cir. 1975), *cert. den., sub nom. Superior Oil Co. v. F.P.C.*, 425 U.S. 971 (1976).

B. The Holding Of *F.P.C. v. Texaco Inc.*[15]

The Commission's conclusion quoted above rests principally, if not totally, on its construction of *Texaco*. A careful examination of that decision is therefore warranted.

In *Texaco*, the Commission attempted to effectively "deregulate" small producers[16] (417 U.S. at 383), by exempting them from all filing requirements and rate ceilings prescribed in the Natural Gas Act and the Commission's Rules for other producers, and to place the burden on the pipeline purchaser of such producer not to pay an "unreasonable" rate, on the penalty of having a portion of their purchased gas cost component in the pipeline cost-of-service disallowed in a future pipeline rate case.[17]

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15. 417 U.S. 380, 94 S.Ct. 2315, 41 L.Ed.2d 141.

16. "Small producer" was defined as an independent producer, unaffiliated with a natural gas pipeline company, whose total jurisdictional sales did not exceed 10,000,000 Mcf per year, 417 U.S. at 383, 45 F.P.C. 454.

17. Although the *Texaco* opinion speaks throughout of purchases from small producers by large producers, as well as by gas pipelines, the burden of the indirect regulation fell almost entirely on the pipelines, not the large producers. Both large and small producers normally sell gas to interstate pipeline companies, which are regulated on an individual company cost-of-service basis by the Commission. Interstate pipelines are the only purchasers who are entitled to recover a "cost of purchased gas" on a cost-of-service basis. Large producers operate gas processing plants in some areas of the

The Commission's Order was challenged in the Court of Appeals by pipeline companies (Tennessee Gas Pipeline Company, the Independent Natural Gas Association of America (an association of pipelines) and Consolidated Gas Supply Corporation), large producers (Texaco Inc., Phillips Petroleum Company and Warren Petroleum Company), the Public Service Commission of New York, (representing the consumer interest), and one small producer, James Forgotson, Sr. The D.C. Circuit held that the practical effect of the Commission's Order was to exempt one class of producers from regulation, which it had no authority to do, and reversed the Commission, *Texaco Inc. v. F.P.C.*, 474 F.2d 416 (1972).

This Court reversed the Court of Appeals and sustained the Commission on the question whether the Commission had the power to indirectly regulate the small producers by regulating the rate of the pipeline purchaser (417 U.S. at 387-393), but affirmed the Court of Appeals' conclusion that the Commission could not relieve the small producer from his obligation under the Natural Gas Act not to sell his gas in interstate commerce at more than the just and reasonable rate (417 U.S. at 394).

The Commission contended that its Order No. 428 did require a finding that the small producers' rate was "just

country, notably the Texas Panhandle and Permian Basin, where they purchase gas from small producers in the field and resell the gas to an interstate pipeline at the plant tailgate after removing the liquid hydrocarbons. As large producers are *not* regulated on an individual cost-of-service basis, continuation of these plant operations depends on the Commission's permission to sell the gas to the interstate pipeline at a rate at least equal to the rate they are permitted to pay the buyer. But in no sense is the small producers' sale price considered a "cost" for rate purposes in determining the large producers' rate.

and reasonable", because it required the pipeline purchaser to reduce its sales price to exclude that portion of the small producer price "which is *unreasonably* high considering appropriate comparisons with higher contract prices for sales by large producers or the prevailing market price for intrastate sales" (417 U.S. at 396). Upon consideration of this language in the Order, this Court concluded that the *only* basis for a determination of the "reasonableness" of the price was a comparison to the marketplace standard. Assertions by Commission's counsel that the Commission would consider *other* "relavant factors" were rejected as post hoc rationalizations of counsel, see 417 U.S. at 397, citing *Burlington Truck Lines v. United States*, 371 U.S. 156, 168-169 (1962) and *S.E.C. v. Chenery Corp.*, 332 U.S. 194, 196 (1947). Significantly, this Court said at that point in the Opinion:

> "Had the order unambiguously provided what the Commission now asserts it was intended to provide, we would have a far different case to decide." (417 U.S. at 397). (n. omitted)

Then appears the language quoted by the Commission and relied on at page 20 of its Brief. The Commission's error lies in reading this language, in which the Court clearly states that the market price cannot be the "final measure" (417 U.S. at 397) or the "conclusive" determinant (417 U.S. at 399) or the "exclusive reliance" (417 U.S. at 400) as meaning that the Commission cannot utilize or rely at all on market prices for *any cost component* of the total rate permitted to be charged by the producer, even though it retains the power to examine this cost component for reasonableness, and even though this cost component is determined in part with reference

to other factors, and even though many other considerations enter into the final rate determination.

The Commission's interpretation is clearly foreclosed by the following language by the Court:

> "This does not mean that the market price of gas would never, in our individual case, coincide with the just and reasonable rates or not be a relevant consideration in the setting of area rates, see, Permian Basin Area Rate Cases, 390 U.S. at 793-795; 20 L.Ed.2d 312; *it may certainly be taken into account along with other factors,* Southern Louisiana Area Rate Cases, 428 F.2d 407, 441 (CA 5) cert. denied, sub nom. Associated Gas Distributors v. Austral Oil Co., 400 U.S. 950, 27 L.Ed.2d 257, 91 S.Ct. 241 (1970)." (417 U.S. at 399) (Emphasis supplied).

In this case, the settlement which the Commission was asked to approve did not place "exclusive reliance" on the intrastate market price as a determinant of the royalty cost to be flowed through to the pipeline. The price on which the royalty percentage would be based was 78 cents per Mcf plus an escalation of 1.5 cents per Mcf per year, or 150 percent (later reduced to 100%, see Pennzoil's Brief in Opposition to Petition for Certiorari, p. 4, n. 4) of the applicable ceiling rate determined by the Commission, whichever was higher. If the Commission in a later proceeding increased the ceiling rates (31.11 cents and 59.88 cents in 1975, Br., p. 4) applicable to this sale, above the 78-cent level, then the Commission's ceiling rate would control without any reference to the intrastate market price. More importantly, if the intrastate market price increased above 78 cents, plus 1.5 cents per year, the royalty would still be based on the 78-cent price. According to the evidence in the record, this has in fact occurred. In the State Court action Williams was contending the market price had reached $1.40 per Mcf by January 1, 1975 (A., p. 44). Mr. Lamar Smith, witness for the purchaser, United Gas Pipe Line Company, testified that by July 1975 the unregulated market price in South Louisiana was "well above $1.50" per Mcf (A., p. 56). Mr. Smith cited a number of contracts which his company had entered into in this area for non-jurisdictional gas at prices ranging from $1.0804 per Mcf to $1.5786 per Mcf (A., pp. 57, 58). The most recent publication by the Commission shows the average new contract price in Southern Louisiana to be $1.949 per Mcf for the first quarter[18] of 1978. It is readily apparent that the 78-cent price is a compromise figure arrived at to settle a lawsuit, and is not based *entirely* on unregulated prices.[19]

C. Other "Basic Principles Of Rate Regulation" Require Affirmance Of The Court Of Appeals.

One of the most basic principles of rate regulation is that the regulated company be afforded some forum to show the reasonable costs which it has incurred, and if the rate to be charged is to be based on costs as the Commission has insisted, that *some* adjustment or provision be made for the recovery of those costs. In making this assertion, Shell is not arguing the merits of an indi-

18. Publication is attached hereto as Appendix B, see pp. 22, 23 *infra*.

19. Contrary to the Commission's implication (Br., pp. 21-22), the price on which the royalty is calculated under the settlement with the royalty owners, 78 cents plus 1.5 cents annual escalations, does not "fluctuate" with further increases in the intrastate market price. This is the principal advantage when Shell and Pennzoil, as well as United and its customers, derive from the settlement.

vidual company or individual project cost basis for rates as opposed to area or national rates, as the Commission implies (Br., p. 33). The point is, that the Commission has already *expressly refused* to consider this type of cost in area and national rate proceedings, and its refusal has been affirmed by the Court of Appeals and this Court, *Placid Oil Co. v. F.P.C.*, 483 F.2d 880, 910-911 (5th Cir. 1973), affirmed *Mobil Oil Corp. v. F.P.C.*, 417 U.S. 283, 328; Opinion No. 749-C, ____ F.P.C. ____, issued July 19, 1976, slip opinion, p. 27 affirmed *Tenneco Oil Co. v. F.E.R.C.*, 571 F.2d 834, 848 (5th Cir. 1978); Opinion Nos. 699 and 699-H, 51 F.P.C. 2212, 2272, 52 F.P.C. 1604, affirmed *Shell Oil Co. v. F.P.C.*, 520 F.2d 1061, 1068, *cert. den. sub nom. California Co. v. F.P.C.*, 426 U.S. 941 (1976).

Having made the decision *not* to consider the question of additional royalty costs incurred by producers in an area or national rate decision, if the Commission has no power to consider the question in a proceeding for individualized relief as it insists, the producer is left without *any proceeding at all* in which this issue will be considered.

The error of the Commission's position is made even clearer by reference to the language used by this Court, and by the Fifth Circuit, in affirming this Commission's earlier decision *not* to consider this issue in an area rate case. This Court said:

> "We agree with the Court of Appeals that Mobil's argument is hypothetical at this stage and that in any event an affected producer is entitled to seek individualized relief. The Court of Appeals said:
>
> ' . . . we are not willing to alter or stay the implementation of area wide rates for the entire industry merely on the basis of what *might* happen to *some* producers' costs if the [D. C. Circuit's] statement of the law prevails.
>
> 'If, as subsequent events develop, the producers are put in a bind by their royalty obligations, they may certainly petition FPC for individualized relief. Permian contemplated it.' 483 F.2d, at 911 (italics in original)." 417 U.S. at 328)

The Commission's attempt to avoid the clear instruction of this Court in *Mobil* is difficult to follow and impossible to understand (Br., pp. 30-32). The Commission launches into a discussion of whether the special relief should be granted *in the hearing for individualized relief* ordered by the Court. The fallacy in that discussion is that in this case, *no such hearing has ever been held.* The truncated and high pressure proceeding[20] which the Commission ordered on this issue was disregarded by the Commission in reaching its decision, *because it found it had no jurisdiction even to consider the issue* (Br., p. 34). All the Court of Appeals did was remand this issue to the Commission *for a decision on the merits* (Op., A. p. 8a). The Court is not being asked to review a decision by the Commission on the merits of the question whether the producers have incurred a cost which is unreasonable and should not be flowed through to the pipeline. The Court is instead being asked by the Commission to find that it *has no jurisdiction to hold a hearing* to determine whether these costs are unreasonable or not! The Court of Appeals was clearly correct in remanding the case to the Commission for consideration of this issue.

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20. The nature of the hearing before the Commission is discussed further at pages 23, 24, *infra*.

D. The Record Shows That Without The Relief Requested, Shell's Leases Will Be Confiscated.

Although conceding that the Commission's decision rested entirely on jurisdictional grounds (Br., p. 34), Petitioner proceeds to make three further arguments against Shell's position. These are: (i) there is no reason to impose a higher rate on consumers because of an improvident contract made by Shell and Pennzoil (Br., p. 22, n. 12); (ii) Shell could absorb the higher royalties and still make a profit on its leases (Br., pp. 7-8, 34); and (iii) Shell and Pennzoil may prevail in the State Court litigation against the lessor, so the Petition for Special Relief is premature and possibly unnecessary. (Br., pp. 35-36). We will answer these points *seriatim.*

1. Shell's Lease Contracts Are Not "Unreasonable" Or Improvident.

At several places in its Brief (pp. 18, 22, n. 12), the Commission refers to the rule that it is not required to flow through a producer cost which results from an "excessive or unreasonable" (p. 18) contract made by the producer. As the Commission has made no such finding, this argument cannot support reversal of the Court of Appeals' decision directing the Commission to hold a hearing to address this very question (Op., A. p. 7a). However, a short discussion of the issue is appropriate in light of the Petitioner's implication.

If Shell were to enter into these lease contracts today, with the knowledge of the decisions set out in the Statement, *supra,* it could well be contended that the contracts were improvident and it must absorb any additional costs resulting therefrom.[21] But the leases involved here were entered into on August 29, 1934, before the Natural Gas Act was passed, and July 24, 1952, before this Court's decision in *Phillips v. Wisconsin,* 347 U.S. 672 (1954). Shell had no reason to suspect at the time these leases were obtained, that the royalty percentage set out in those leases would be calculated on any price which would be different than that price received for the sale of the gas, despite the use of the terms "market value" and "market price". The royalty percentages (1/8th and 1/4th) conformed with the industry practice in the area at the time, and were necessary in order to purchase the leases. On these facts, it is apparent that any holding by the Commission that the royalty provisions of these leases were "excessive or unreasonable" would be arbitrary and capricious.

2. If The Requested Relief Is Denied, Shell Faces Confiscation Of Its Leases.

The Commission would lead the Court to believe that Shell can absorb the additional royalty required to be paid if it loses the State Court case with the lessor, and still make a profit on these leases (Br., pp. 7-8, 34). This is incorrect.

The $290,000 annual profit figure calculated by the Administrative Law Judge is based on the 78 cents per Mcf price in the settlement agreement. If the Commission denies the relief requested, there is no settlement, and Shell must proceed with the State Court action

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21. Except in the case of leases from State or Federal Governments, where the lease forms are prescribed by law.

against the lessor. If the lessor prevails, the royalty will be based on current intrastate prices.

The royalty owner contended that the market value, based on intrastate price in 1975, was $1.40 per Mcf (A. p. 137). If the royalty owner's position prevails in the State Court, Shell would be required to pay out as royalty 35 cents per Mcf under the 1952 lease. The record establishes that Shell would owe 5.25 cents per Mcf to the State of Louisiana for severance taxes, and incur 4.5 cents per Mcf as operating costs, which were uncontested by any party and accepted by the Law Judge (A. 137-138, 178). The revenue realized by Shell under Commission ceiling rates on the 1952 lease was 41.6 cents per Mcf. Thus, Shell would lose 3.15 cents for each Mcf of gas produced from this lease, should the lessor prevail (A. 137).

The royalty cost will increase as the "market value" of the gas increases. According to the recent report issued by the Office of Pipeline and Producer Regulation in May 1978,[22] the average price received in Louisiana for new intrastate contracts for the first quarter 1978 was $1.949 per Mcf, and the highest new contract price was $2.14 per Mcf. Therefore, there is basis for a finding by the State Court that the "market value" or "market price" is currently $1.95 per Mcf. Under *Texas Oil & Gas Corporation v. Vela,* 429 S.W.2d 866, 871 (Tex. Sup. Ct. 1968), the "market price" to which the royalty is applied is

22. A copy of the press release, cover sheet, and the page dealing with Louisiana intrastate prices, are attached hereto as Appendix B.

determined on the day the gas is delivered to the purchaser, not the time the contract is entered into.

The Law Judge included $112,664 annual condensate revenues as an offset against operating costs (A. 179). These revenues would be more than offset by the damages owed to lessor for failure to pay past royalties based on market prices. While these damages cannot be quantified down to date, as of April 30, 1975 they were $197,689.49, assuming the lessor prevails in the State Court case (A. 68). For the period after April 30, 1975, these damages would be substantially higher, because of the rapid escalation in intrastate prices.

We would note again that the cost-revenue comparison shown above involves only current operating costs, and contains no allowance for amortization of capital investment, return on that investment, or federal income taxes. This is not because such costs were not incurred by Shell - obviously, wells had to be drilled to produce the gas in question. Instead, this was a result of the manner in which the hearing was conducted by the Commission. Initially the Commission denied Shell's Petition for Special Relief summarily, and ordered a hearing only on the abandonment issue (A. 32-36). Applications for Rehearing were filed, and on the day Shell's counsel appeared at the hearing he was advised that the Commission had reversed its position and ordered a hearing on the special relief question also (A. 37-39). Shell was given a sharply limited time period within which to file cost evidence, because the hearing was being held on an expedited basis. Because these leases are included in ten separate units involving other owners and other lands, which differ in configuration due to

the reservoir involved, the cost calculation is extremely complex (see tabulations and map at A. 151-155). There simply was not time to develop a cost study showing capital investment, return, income taxes, etc. (A. 69-71) applicable to these leases and their share of the respective units.

Moreover, the Commission gave no clear direction of what cost evidence it desired, or what use, if any, it would make of such evidence.[23] The Commission's convening orders merely refer to "overall costs higher than those set forth in Opinion 699-H" (A. 34, 37) without indicating whether these costs are to be computed on a lease, company, area, or national basis. In response to a specific question, Staff counsel was equally ambiguous (A. 70). Faced with this uncertainty, Shell used the nationwide costs used by the Commission in Opinion No. 699-H, substituting the specific lease costs for operating expenses and royalty developed on this record.[24] These studies showed total costs substantially above revenues for both leases, even considering the liquid revenue credit (A. 139-140). This approach was rejected by the Law Judge (A. 177-178).

Before the Commission can reject Shell's Petition for Special Relief on a cost basis, Shell is entitled to the reasonable opportunity to present cost evidence after being informed what type of evidence is required.

23. The Commission's final order disregarded the record entirely.

24. This method had been approved by the Commission in other cases as an acceptable way of determining costs, see Order No. 455, affirmed *Moss v. F.P.C.*, 502 F.2d 461 (D.C. Cir. 1974), affirmed *F.P.C. v. Moss*, 424 U.S. 494 (1976).

3. If The State Court Settlement Is Destroyed By Refusal Of The Commission To Grant Relief, There Is Substantial Risk That The Lessor May Prevail.

We agree with the Commission that the State Courts of Louisiana have not resolved the question whether under a "market value" lease the lessor is limited to a royalty based on the price received by the lessee for the gas (Br., p. 5, n. 4).[25] The *Huber* and *Weymouth* cases discussed *supra*, page 3, hold for the lessor. In *Texas Oil & Gas Corporation v. Vela, supra,* the Texas Supreme Court resolved the issue squarely in favor of the lessor, see also *Butler v. Exxon Corp.*, 559 S.W.2d 410 (Tex. Civ. App.—El Paso 1977); *Kingery v. Continental Oil Co.*, 434 F.Supp. 349 (W.D. Tex. 1977); *Brent v. Natural Gas Pipeline Co. of America,* ____F. Supp.____ (N.D. Tex., Civil Action No. CA-2-75-167, August 1978).

The issue was also resolved in the lessor's favor by the Supreme Court of Kansas in *Lightcap v. Mobil Oil Corp.*, 221 Kan. 448, 562 P.2d 1 (1977), *cert. denied Mobil Oil Corp. v. Lightcap,* 434 U.S. 876, petition for rehearing pending, Case No. 76-1694.

Therefore, while the issue has not been resolved in Louisiana, the lessor has prevailed on this issue in Texas and Kansas, two major gas producing states, and also in the United States Court of Appeals for the Fifth Circuit. It therefore cannot be said that there is no merit to the lessor's position.

25. *Whitehall Oil Co. v. Boagni,* 255 La. 67, 229 So.2d 702, 704-05 (1969) does contain dicta favorable to the lessee's position. However, as the Commission concedes, this was not the issue decided by the Court.

II. The Case Should Still Be Remanded To The Commission On The Abandonment Issue, Even Though The Fifth Circuit's *Southland* Decision Has Been Reversed.

A. What Does The "Public Convenience And Necessity" Require?

Section 7(b) of the Act, quoted by the Commission at page 38, prohibits abandonment of service unless the Commission finds "that the public convenience and necessity permit such abandonment". In support of its position that the public convenience and necessity favored abandonment as to the lessor's percentage share of the gas stream, Shell made the following arguments:

1. Should the lessor prevail in his State Court action, Shell was faced with the loss of its lease, including its entire capital investment, rights to future production, and liability in damages for prior underpayment of royalties, either by order of the court for breach of contract, or by the establishment of a royalty which was so high as to make further operation of the lease uneconomic, therefore causing expiration of the lease by its terms. This would amount to confiscation of Shell's leasehold estate by regulatory action.

2. Should the lessor prevail, and Shell's leases terminate, the entire gas stream, not merely one-eighth (1/8th) of one-fourth (1/4th) of the gas, would be lost to United and the interstate consumer.

3. Assuming *arguendo* that Shell is in error on Point 2, United Gas Pipe Line Company and its interstate customers would still suffer a detriment if Shell's leases are terminated, though:

(a) Loss of additional gas supplies obtained by additional wells planned by Shell and Pennzoil which would never be drilled.

(b) Higher prices paid to the lessor because of his status as a small producer, and the rate structures adopted by the Commission.

The Commission did not address Shell's first and third contentions in either of its Opinions, its Briefs to the Court of Appeals, or its Brief here. It dealt only with the second issue, relying on its decision in *El Paso Natural Gas Co.*, Opinion No. 737. As the Commission explains (Br., pp. 37-41), the Fifth Circuit reversed this decision in *Southland Royalty Co. v. F.P.C.*, 543 F.2d 1134 (1976), and relied on that reversal to reverse the Commission below (Op., p. 9a). Shell concedes that the grounds for reversal relied on by the Court of Appeals was wiped out by this Court's opinion in *California v. Southland Royalty Co.*, ___ U.S. ___ 98 S.Ct. 1955, 56 L.Ed.2d 505 (1978). But this does not mean that the case should not be remanded to the Commission on the abandonment issue as well.

B. The "Investor" Interest Is Entitled To *Some* Consideration.

The statutory determination whether abandonment is in "the public convenience and necessity" rests on a broader base than merely the question of whether failure to grant abandonment could occasion loss of the entire gas stream to the interstate market. All major decisions

by this Court enjoin the Commission to consider the "end results" of its actions, and to "balance both investor and consumer interests", see *F.P.C. v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *Permian Basin Area Rate Cases,* 390 U.S. 747, 770 (1968); *Mobil Oil Corp. v. F.P.C.*, 417 U.S. 283, 307 (1974); *F.P.C. v. Texaco,* 417 U.S. 380, 388-389 (1974).

If the "end result" of the Commission's action in denying abandonment is complete destruction of the investor interest, it is difficult to see how that interest has even been considered, much less balanced against the consumer interest. The granting of abandonment on the lessor's interest merely means that this gas will be sold on the intrastate, rather than the interstate market. There is no finding, or any basis for a finding, that public policy favors the interstate consumer over the intrastate consumer.

As discussed at page 22, *supra,* on one of Shell's two leases the total revenue is already exceeded by operating expenses, State taxes, and lessor's royalty, if the lessor prevails in the State Court. If the trend in increasing market prices continues, the other lease will shortly be in this posture. There is no question that affirmance of the Commission will place Shell squarely at the mercy of the State Court action against the lessor. This Court has held that the Commission cannot fix confiscatory rates, *California v. Southland Royalty Co.*, ____U.S.____, 98 S.Ct. 1955, 56 L.Ed.2d 505, slip opinion p. 8; *F.P.C. v. Natural Gas Pipeline Co.*, 315 U.S. 575 (1942); *F.P.C. v. Hope Natural Gas Co.*, 320 U.S. 591, 602-603 (1944).

C. Where Lies The "Consumer" Interest?

The Commission concludes that under this Court's opinion in *California v. Southland Royalty Co., supra,* should Shell's lease terminate the lessor will be required to continue the sale to United Gas Pipe Line Company, and therefore its inquiry into the merits of abandonment is at an end. The Commission has not considered, and if affirmed by this Court will never consider, the impact on the consumer that would result from the termination of Shell's lease.

This Court in *Southland* found that the service obligation to continue the sale of gas in interstate commerce continued until the Commission granted abandonment, even though the leasehold estate had terminated. But it did not hold that the lessor was bound by the *contract to sell gas* entered into by the lessee. Indeed, the thrust of the Court's opinion is that the service obligation controlled over private contractual arrangements. At page 7 of the slip opinion, the Court said:

> " . . . [T]he Act is concerned with the continuation of 'service' rather than with particular sales of gas or contract rights."

Therefore, as we read *Southland,* the lessors would be obligated to continue the sale to United, but would not be bound by the *contract* entered into between Shell and United. Thus, the lessors would be entitled to enter into a "replacement contract" with United. Under the rate structure set up by the Commission in Opinion No. 699-H[26] and reaffirmed in Opinion No. 770-A, affirmed

26. Affirmed *Shell Oil Co. v. F.P.C., supra.*

American Public Gas Association v. F.E.R.C., 567 F.2d 1016 (1977), *cert. den.*, ___U.S.___, 55 L.Ed.2d 499, the ceiling applicable to this "replacement contract" would be the 59.88-cent rate authorized in Opinion No. 699-H (A. 42, 67). Thus, instead of paying the prices paid to Shell under present ceilings of 39.0 cents on the 1934 lease (A. 136) and 41.6 cents on the 1952 lease (A. 136). United's customers would have to pay 59.88 cents per Mcf for the *entire gas stream.*

There is a strong probability that the lessor could qualify for an even higher rate. In Order No. 568 issued July 14, 1977, __F.P.C.__, the Commission held that a "small producer"[27] was entitled to a higher just and reasonable rate than a large producer, specifically 130 percent of the base ceiling rate established in Opinion No. 699, *et seq.* (18 C.F.R. 157.40(c) (1)). Therefore, if the Williams qualify as "small producers" they will be entitled to a ceiling rate of 74.96 cents (52¢ x 130% = 67.6¢, plus Btu and tax adjustments of approximately 7.36¢) for the entire gas stream.[28] Thus, the consumer will suffer substantial price *increases* if Shell's leases terminate, because of the different rate structures established by the Commission.

Nor is it likely that the consumer will suffer any decrease in supply if abandonment is granted on the lessor's interest. While the percentage of the current production going to the interstate consumer (but not the overall market, as the intrastate consumer would receive these supplies) would be decreased by one-eighth

27. Defined as a producer selling less than ten million Mcf per year in interstate commerce.

28. This compares with 42.6¢ and 50.6¢ per Mcf paid to Shell if the special relief were granted, A. 136.

(1/8th) and one-fourth (1/4), respectively, the total supply of the gas is likely to increase. This is true because both Shell and Pennzoil have indicated additional wells may be drilled on these leases if this litigation can be resolved in accordance with the terms of the settlement with the lessor (A. 47, 48, 67). There is no evidence that the lessor has the capital, or the inclination, to do any additional drilling. If Shell and Pennzoil are allowed to proceed with their plans free of the cloud created by this litigation, it is likely that the supply of gas to the interstate consumer may be increased, not decreased.

On this issue also, this Court's review is premature because the Commission never considered the impact of denying abandonment on the producers, the intrastate consumers, or the interstate consumers. It considered *only* the narrow question whether this gas must continue to be sold in interstate commerce if Shell's and Pennzoil's leases terminated. The case should be remanded to the Commission on the abandonment issue also, with instructions to consider *all aspects* of the "public convenience and necessity".

CONCLUSION

This case is prematurely before this Court, as the Commission has not considered either of the two types of relief requested on the merits. There is no prohibition, either in the Act or this Court's *Texaco* decision which preclude this consideration by the Commission. The

Court of Appeals' decision remanding this case to the Commission should be affirmed.

Respectfully submitted,

/s/ THOMAS G. JOHNSON

THOMAS G. JOHNSON
Attorney for
SHELL OIL COMPANY

October 5, 1978

APPENDIX A

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION
DECLARATORY ORDER—ROYALTY

Before Commissioners: Richard L. Dunham, Chairman; Don S. Smith, John H. Holloman III, and James G. Watt.

Exxon Corporation — Docket No. R176-29

ORDER GRANTING INTERVENTION AND RESPONDING TO PETITION FOR A DECLARATORY ORDER

(Issued May 18, 1976)

On September 18, 1975, Exxon Corporation (Exxon) filed a petition for declaratory order pursuant to Sections 4, 7, 14, and 16 of the Natural Gas Act[1] and Section 1.7 (c) of the Commission's Rules of Practice and Procedure.[2] The petition requests the Commission to answer certain questions, hereinafter discussed, which relate to pending litigation between Exxon and certain lessors regarding the sale of natural gas in interstate commerce for resale. 27 parties filed petitions to intervene (Appendix A) and 9 parties filed untimely petitions to intervene (Appendix B).

Exxon's question and our answers are as follows:

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1. 15 U.S.C. §§ 717c, f, m and o.
2. 18 C.F.R. § 1.7(c).

1. Will the Commission declare that its applicable just and reasonable ceiling rates, or a producer's effective rate, are the "market prices" for purposes of meeting royalty obligations under leases from which gas is produced and sold in interstate commerce?

The Commission's jurisdiction over royalty payments by producers to lessors was rejected by the Court in *Mobil Oil Corporation v. F.P.C.*, 463 F.2d 256 (D.C. Cir. 1972), *cert. den'd*, 406 U.S. 976 (1976). The Court held that although the Commission had jurisdiction over rates charged by a producer, it had no jurisdiction over the rate utilized in computing the royalty payment. Accordingly, the above contract question posed by Exxon would be one for the appropriate court to decide. The court in *Mobil* mentioned the possibility that, "[T]he court handling the contract clause could avoid becoming embroiled in the ascertainment of the Federal ceiling by referring the issue to the FPC." (*Mobil* at 265). However, as intervenors Jane Alida Baugh Beard *et al.* have correctly pointed out, it is only upon proper reference from the court handling such a contract clause that we could become involved, to any extent, in the contract issue. That not being the case here, we decline further comment.

2. Will the Commission allow the automatic adjustment of a producer's applicable ceiling rate when that producer shows that it is required to pay a royalty to its lessor(s) on a basis higher than such applicable just and reasonable rate?

Recently, in Opinion No. 753[3] we discussed this issue

3. Pennzoil Producing Company and Shell Oil Company, Opinion No. 753 (Issued January 30, 1976); Opinion No. 753-A (Issued February 27, 1976); Opinion No. 753-B (Issued March 26, 1976).

in the context of a proposed settlement agreement regarding royalty payments between the lessors-royalty owners and lessees-producers. We stated there that a producer is always at liberty to compute royalty payments on the basis of a rate in excess of the ceiling rate, but that if he "attempts to flow this cost through to the pipeline and ultimately to the consumer, we must determine if this *incremental royalty cost* is just and reasonable." (Opinion No. 753 at 6). We held that incremental royalty costs could not be based on any other factors than the just and reasonable rate, citing *F.P.C. v. Texaco.*[4] The foregoing discussion was specifically with reference to the proposed settlement agreement therein in issue. As we noted in both Opinion Nos. 753-A and B, our conclusions were not based upon the existence of a state court judgment and our reference in Opinion No. 753 at page 7 to such judgments is indeed dicta.

In light of our response to this question, additional comments on questions 3 and 4 are unnecessary.

5. If the answers to questions 1 through 4. above are "No", will the Commission permit the abandonment of the fractional portion of gas reserves dedicated to a contract attributable to the royalty interest in the event than the lessee-producer is required to pay royalties on a basis higher than the just and reasonable ceiling rate applicable to such gas?

This precise issue was raised in connection with the alternative application for abandonment filed by Pennzoil and Shell in Opinion 753. In that case we denied the request for abandonment finding neither that the gas supply had been depleted to the extent that the continuation

4. *FPC v. Texaco, Inc.*, 417 U.S. 380 (1974).

of service was unwarranted or that the present or future public convenience or necessity required authorization of abandonment. We will not permit abandonment of the royalty gas merely because a producer is required to pay royalties on the basis of a rate above that which the producer is entitled to collect under the Natural Gas Act.

The Commission orders:

(A) Good cause exists to grant intervention in these proceedings to those parties listed in Appendix A and B, subject to the rules and regulations of the Commission; *Provided, however,* that participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions to intervene; and *provided, further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in these proceedings.

(B) The questions raised in Exxon's petition are answered in the text of this order.

By the Commission.

(S E A L)

Kenneth F. Plumb,
Secretary

Docket No. RI76-29

APPENDIX A

Shell Oil Company
Mobil Oil Company
The California Company, Division of Chevron Oil Company
Chevron Oil Company, Western Division
Amerada Hess Corporation
Phillips Petroleum Company
Tenneco Oil Company
Pennzoil Producing Company
Texaco, Inc.
Continental Oil Company
Atlantic Richfield Company
Jane Alida Baugh Beard, *et al.*
Michigan Wisconsin Pipe Line Company
United Gas Pipe Line Company
State of Louisiana
LaGloria Royalty Owners Association, Inc.
Enserch Corporation, Inc.
Natural Gas Pipeline Company of America
Gulf Oil Corporation
Tennessee Gas Pipeline Company
Austral Oil Company, Inc.
General American Oil Company of Texas
Ada Resources, Inc.
Crystal Oil Company
Inexco Oil Company
Estate of E. Cockrell, Jr., Deceased, *et al.*
Perry R. Bass, Inc.

Docket No. R176-29 APPENDIX B

William M. Fuller
Damson Oil Corporation
Cities Service Oil Company
Northern Natural Gas Company
Union Oil Company of California
Burmah Oil and Gas Company, Burmah Oil Development, Inc. and Signal Petroleum
Amoco Production Company
Getty Oil Company
Marathon Oil Company

APPENDIX B

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

NEWS RELEASE WASHINGTON, D. C. 20426

(S E A L) IMMEDIATE RELEASE
June 13, 1978 FE-316

FERC RELEASES SUMMARY OF INTRASTATE NATURAL PRICES FOR FIRST QUARTER 1978

The Federal Energy Regulatory Commission today released a staff report summarizing prices which natural gas producers subject to FERC regulation received for intrastate gas sales contracted for during the first quarter of 1978.

The average price for new contracts was $1.78 per thousand cubic feet in the first 1978 quarter, compared with $1.85 for the previous quarter. Prices ranged from 75 cents per thousand cubic feet in Oklahoma to $2.30 in Texas.

Prices for renegotiated or amended contracts in the first 1978 quarter averaged $2.03 per thousand cubic feet, compared with $1.79 for the previous quarter. Average prices ranged from 43 cents to $2.53, both in Texas.

The report covers independent natural gas producers with more than one billion cubic feet of annual jurisdictional sales. This is the tenth summary issued since the Commission's January 1975 order (No. 521) establishing a new form (No. 45) for collection of this data.

In view of the interest in recent natural gas sales at or above $1.75 per thousand cubic feet, this report includes percentages of volumes contracted at this price or

higher. These percentages are 59 percent for all new contract volumes, and 92 percent for renegotiated or amended contract volumes.

Form 45 reports were filed by 80 producers representing 414 intrastate contracts executed during the first quarter. The data excludes contracts having terms of less than one year, contracts for percentage sales and contracts not reporting volumes.

Individual Form 45 reports were found by the U.S. Court of Appeals for the Fifth Circuit to contain proprietary information which the Court said must not be made public. The report issued today therefore contains only aggregated data in compliance with the Court's decision.

The entire report, which includes summary tables by state and pricing area, accompanies this news release.

-FERC-

For further information
call, Stephen P. Siegel, 275-4006
(Area Code 202)

DC-E

FEDERAL ENERGY REGULATORY COMMISSION

INTRASTATE NATURAL GAS PRICES OF FERC JURISDICTIONAL NATURAL GAS COMPANIES SELLING MORE THAN ONE MILLION MCF PER YEAR IN INTERSTATE COMMERCE

SUMMARY BY STATE AND FERC GAS PRICING AREA, JANUARY, FEBRUARY, MARCH 1978

OFFICE OF PIPELINE AND PRODUCER REGULATION STAFF REPORT

Washington, D.C.

May, 1978

Louisiana

NEW CONTRACTS

¢/Mcf

	January	February	March	January-March
High	214.00	180.37	199.26	214.00
Average	194.38	180.37	198.62	194.90
Low	165.00	180.37	178.43	165.00
% Contract Volumes Sold Between				
201 - 250¢	16.5			14.0
151 - 200	83.5	100.0	100.0	86.0
101 - 150				
51 - 100				
0 - 50				
Contract Volumes Mcf	14,516,400	110,000	2,447,500	17,073,900

RENEGOTIATED OR AMENDED CONTRACTS

	January	February	March	January-March
High	218.63	212.85	182.35	218.63
Average	202.88	181.40	182.35	186.74
Low	127.45	155.36	182.35	127.45
% Contract Volumes Sold Between				
201 - 250¢	49.7	26.3		31.3
151 - 200	50.2	73.7	100.0	68.7
101 - 150	0.1			
51 - 100				
0 - 50				
Contract Volumes Mcf	2,761,580	8,035,550	372,311	11,169,441